



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 11, 2006

MEMORANDUM

TO: The Commission

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Associate General Counsel

Amy L. Rothstein
Acting Assistant General Counsel

Ron B. Katwan
Attorney

Subject: Draft AO 2006-31

Attached are two alternative drafts of Advisory Opinion 2006-31. The subject advisory opinion request was made public on September 21, 2006, and therefore the deadline for written comments on the request itself was October 2, 2006. *See* 2 U.S.C. 437f(d); 11 C.F.R. 112.3(e). OGC has set 1:00pm on October 12, 2006, as the deadline for comments on the attached drafts. OGC plans to circulate a draft of Advisory Opinion 2006-31 as a tally-vote item on October 12, 2006.

Attachment

October 11, 2006

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2006-31 is available for public comments under this procedure. It was requested by Marc E. Elias, Esq., and Ezra W. Reese on behalf of Bob Casey for Pennsylvania Committee.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 1:00pm (Eastern Time) on October 12, 2006.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2006-31, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

MAILING ADDRESSES

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Washington, DC 20463

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999 E Street, NW
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2 ADVISORY OPINION 2006-31
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4 Marc E. Elias, Esq.
5 Ezra W. Reese, Esq.
6 Perkins Coie LLP
7 607 Fourteenth Street, N.W.
8 Washington, D.C. 20005
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DRAFT A

10 Dear Mr. Elias and Mr. Reese:
11

12 We are responding to your advisory opinion request on behalf of the Bob Casey
13 for Pennsylvania Committee (the “Casey Committee”) regarding whether, under the
14 Federal Election Campaign Act of 1971, as amended (the “Act”), a television station
15 would make a prohibited corporate in-kind contribution to the Casey Committee by
16 selling advertising time at the Lowest Unit Charge (“LUC”)¹ if Mr. Casey is not
17 “entitled” to the LUC under section 315 of the Communications Act of 1934, as
18 amended. *See* 47 U.S.C. 315(b).

19 The Commission concludes that its statutory jurisdiction does not extend to the
20 Communications Act, but as long as the television station offers the LUC to all Federal
21 candidates, the LUC would be a discount offered in the ordinary course of business and
22 therefore would not be an in-kind contribution to the Casey Committee and thus not a
23 violation of the Federal Election Campaign Act, regardless of whether Mr. Casey is
24 “entitled” to the LUC under the Communications Act.

25 ***Background***

26 The facts presented in this advisory opinion are based on your letter of September
27 19, 2006, as supplemented by your emails of September 20, 2006.

¹ The LUC is the lowest advertising rate that a station charges other advertisers for the same class and amount of time for the same period. *See* 47 U.S.C. 315(b)(1) and 47 CFR 73.1942(a)(1).

1 The Casey Committee is the authorized committee of Bob Casey, a candidate for
2 election to the United States Senate from the Commonwealth of Pennsylvania. Mr.
3 Casey's opponent in the general election is Senator Rick Santorum.

4 On September 12, 2006, Senator Santorum and his campaign committee,
5 Santorum 2006 (the "Santorum Committee"), ran a television advertisement that
6 contained several direct references to Mr. Casey. According to the storyboard that you
7 provided of the Santorum Committee's advertisement, an image of Senator Santorum
8 appears only in the first frame of the advertisement. A written statement that Senator
9 Santorum approves the message appears at the end of the advertisement, but this
10 statement is not accompanied simultaneously by an image of Senator Santorum.

11 You assert that the Santorum Committee's advertisement does not satisfy the
12 requirements of section 315 of the Communications Act. The Communications Act
13 generally requires broadcasters to provide candidates the LUC for a candidate's political
14 advertisements in the 45 days preceding a primary election and the 60 days preceding a
15 general election. However, the Bipartisan Campaign Reform Act of 2002, Pub. L. No.
16 107-155, 116 Stat. 81 (March 27, 2002) ("BCRA"), amended section 315 of the
17 Communications Act of 1934, 47 U.S.C. 315(b), to provide that a Federal candidate
18 "shall not be entitled" to the LUC if any of the candidate's advertisements makes a direct
19 reference to the candidate's opponent and fails to contain a statement both identifying the
20 candidate and stating that the candidate has approved the communication (the
21 "Communications Act Statement"). In the case of television advertisements, for a period
22 of no less than four seconds at the end of the ad, there must appear simultaneously "(i) a
23 clearly identifiable photographic or similar image of the candidate; and (ii) a clearly

1 readable printed statement, identifying the candidate and stating that the candidate has
2 approved the broadcast and that the candidate's authorized committee paid for the
3 broadcast." BCRA sec. 305, 116 Stat. at 101.

4 On September 15, the Santorum Committee received a letter from KDKA
5 Television, a corporation, stating that KDKA was prepared to offer Senator Santorum the
6 LUC for the remainder of the election campaign, despite "certain inconsistencies between
7 the form of the disclaimers made in a spot for the Santorum campaign ... and the
8 requirements of the Bipartisan Campaign Reform Act."² Subsequently, KDKA informed
9 the Casey Committee that KDKA would also make the LUC available for advertisements
10 run by Mr. Casey, regardless of whether the advertisements contain the proper
11 Communications Act Statement.

12 On September 20, KDKA amended its Political Disclosure Statement, which sets
13 forth the station's policies regarding the sale of time to candidates for public office, to
14 provide as follows: "It is not presently clear whether a station may, as a matter of its own
15 discretion, continue to afford the lowest unit charge to a candidate who has caused the
16 broadcast of an ad that does not comply with the above disclaimer requirements [*i.e.*,
17 does not contain the proper Communications Act Statement]. Pending further guidance
18 from the Federal Election Commission or the Federal Communications Commission, the
19 Station will continue to afford the lowest unit rate to candidates in these circumstances."
20 Several other incorporated television stations that have run Senator Santorum's
21 advertisements have similarly assured the Casey Committee, albeit orally rather than in

² A copy of this letter is attached to your request.

1 writing, that they would make the LUC available to Mr. Casey, regardless of whether the
2 Casey Committee's advertisements include the proper Communications Act Statement.

3 The Casey Committee would like to accept the offers it has received from KDKA
4 and other television stations to provide airtime at the LUC, regardless of whether the
5 Casey Committee's advertisements include the proper Communications Act Statement.

6 Accordingly, the Casey Committee is developing several broadcast television
7 advertisements that would directly refer to Senator Santorum and that would be
8 accompanied by a variety of different statements. Among the options the Casey
9 Committee is working with are (1) an advertisement containing a written statement at the
10 end of the advertisement but without a simultaneous clearly identifiable image of Mr.
11 Casey, whose image would appear at the beginning of the advertisement in conjunction
12 with an aural statement, similar to the Santorum Committee's advertisement discussed
13 above, and (2) an advertisement containing all of the statements required under
14 Commission regulations, but all aired entirely at the beginning of the advertisement. You
15 assert that all of the options you are considering would satisfy the requirements of the
16 Federal Election Campaign Act, *see* 2 U.S.C. 441d(d)(1)(b),³ but none of them would
17 contain the proper Communications Act Statement.

18 The Federal Communications Commission ("FCC") has jurisdiction over the
19 Communications Act, but has not yet promulgated regulations implementing the BCRA

³ The Commission notes that, as described, the second category of advertisements that you contemplate would not be permissible under the Act and Commission regulations. 2 U.S.C. 441d(d)(1)(b) requires candidates sponsoring television advertisements to identify themselves and state that they approved the communication. The statement must be conveyed by either (1) an unobscured, full-screen view of the candidate, or (2) a voice-over by the candidate, accompanied by a clearly identifiable photographic or similar image of the candidate. The statement must also appear in writing *at the end of the communication* in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least four seconds. *See also* 11 CFR 110.11(c)(3).

1 amendments to the Communications Act. Informal conversations between Commission
2 staff members and FCC staff members confirm, however, that the FCC staff interprets the
3 BCRA amendments to the Communications Act to allow a television station to offer the
4 LUC to a candidate whose advertisements do not contain the proper Communications Act
5 Statement, as long as the station treats all Federal candidates in a consistent, non-
6 discriminatory manner. You have informed us that FCC staff members have further
7 confirmed this interpretation in informal conversations with KDKA and other television
8 stations. The FCC has not made a formal determination as to whether any of the
9 advertisements run by the Santorum Committee or any of the advertisements that you
10 propose would or would not contain the proper Communications Act Statement.

11 ***Question Presented***

12 *Would the Casey Committee receive a prohibited in-kind contribution if an*
13 *incorporated television station charged Mr. Casey the LUC for advertising time when*
14 *Mr. Casey is not “entitled” to the LUC under the Communications Act?*

15 ***Legal Analysis and Conclusions***

16 No, the Casey Committee would not receive a prohibited in-kind contribution if
17 an incorporated television station charged Mr. Casey the LUC for advertising time. As
18 long as the television station offers the LUC to all Federal candidates, the LUC would be
19 a discount offered in the ordinary course of business.

20 To begin with, the Commission notes that it does not have jurisdiction over the
21 Communications Act or over whether a candidate’s advertisement meets or does not meet
22 its requirements. The Commission has jurisdiction only over whether a candidate
23 complies with the Federal Election Campaign Act. Because the Commission does not

1 have the authority to determine whether a candidate's advertisement meets the
2 requirements of the Communications Act, the Commission cannot determine if any given
3 advertisement is or is not "entitled" to the LUC. However, for the purposes of this
4 advisory opinion, the Commission assumes that the advertisements in question would not
5 meet the requirements of the Communications Act and thus would not be guaranteed or
6 "entitled" to the LUC, based on your assertion that "none [of the advertisements] will
7 meet the additional requirements of 47 U.S.C. 315(b)(2)(C)."⁴

8 Under the Act, a corporation makes a prohibited in-kind contribution to a political
9 committee when it gives that committee a discount outside of the corporation's ordinary
10 course of business. The Act prohibits corporations from making any contributions or
11 expenditures in connection with a Federal election. *See* 2 U.S.C. 441b(a). The Act and
12 Commission regulations define the terms "contribution" and "expenditure" to include any
13 gift of money or anything of value for the purpose of influencing a Federal election. *See*
14 2 U.S.C. 431(8)(A)(i) and 431(9)(A)(i); 11 CFR 100.52(a) and 100.111(a); *see also* 2
15 U.S.C. 441b(b)(2) and 11 CFR 114.1(a)(1) (providing a similar definition for
16 "contribution and expenditure" with respect to corporate activity). Commission
17 regulations further define "anything of value" to include all in-kind contributions and
18 state that, unless specifically exempted under 11 CFR 100.71(a), the provision of any
19 goods or services (including advertising services) without charge, or at a charge that is

⁴ The situation presented here differs materially from that presented in Advisory Opinion 2004-43 (Missouri Broadcasters Association), in which the Commission concluded that a broadcaster's decision to offer a Federal candidate the LUC did not result in an in-kind contribution when there was no evidence of a violation of the disclaimer requirements. In the present situation, the Casey Committee has stipulated that its advertisements will, in fact, not contain the proper Communications Act Statement, and the Commission has no basis for second-guessing that stipulation.

1 less than the usual and normal charge for such goods or services, is a contribution. *See*
2 11 CFR 100.52(d)(1); *see also* 11 CFR 100.111(e)(1).

3 If a broadcaster provides the LUC to a Federal candidate who is not legally
4 entitled to receive it, the broadcaster's sale price would constitute a discount. The
5 Commission has held, however, that discounts that are less than the usual and normal
6 charge are not contributions if such discounts are offered in the ordinary course of
7 business. *See, e.g.*, Advisory Opinions 2004-18 (Friends of Joe Lieberman), 1996-2
8 (CompuServe), and 1989-14 (Anthony's Pier 4 Restaurant). Given that the LUC is a
9 statutorily mandated discount available to all candidates whose advertisements satisfy
10 section 315 of the Communications Act, it is a discount offered in the ordinary course of
11 business to those candidates. Additionally, because the LUC itself is based on the rates
12 available to certain commercial advertisers, it is by definition offered to other customers
13 in the ordinary course of business. Accordingly, the Commission concludes that the
14 provision of the LUC to the Casey Committee would not result in a prohibited in-kind
15 contribution, regardless of whether the Casey Committee's advertisements would comply
16 with section 315 of the Communications Act, so long as the television station provides
17 the LUC to all Federal candidates, including candidates who do not comply with section
18 315 of the Communications Act, thereby ensuring that the television station does not
19 favor any particular candidate.⁵

⁵ The situation presented here differs materially from those in previous advisory opinions, in which the Commission determined that a corporate discount would be provided to a political committee "in the ordinary course of business" only if the corporation offered the same discount on the same terms and conditions to customers other than political committees. *See, e.g.*, Advisory Opinions 2004-18 (Friends of Joe Lieberman), 1996-2 (CompuServe), and 1989-14 (Anthony's Pier 4 Restaurant). In those advisory opinions, there was no statutory provision comparable to Section 315 of the Communications Act, requiring corporations to make services available to Federal candidates at a special discounted rate, as there

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Michael E. Toner
Chairman

is here. The Communications Act requires broadcasters to offer their LUC to Federal candidates regardless of the quantity of advertising time they purchase. By creating a special discount to which only Federal candidates are eligible, the Communications Act establishes Federal candidates as a separate class of customers. Accordingly, in determining whether provision of the LUC is in the ordinary course of business, the Commission needs to consider only whether the LUC is given on the same terms and conditions to all Federal candidates, and not whether it is also offered on the same terms and conditions to other customers.

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2 ADVISORY OPINION 2006-31
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7 607 Fourteenth Street, N.W.
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DRAFT B

10 Dear Mr. Elias and Mr. Reese:
11

12 We are responding to your advisory opinion request on behalf of the Bob Casey
13 for Pennsylvania Committee (the “Casey Committee”) regarding whether, under the
14 Federal Election Campaign Act of 1971, as amended (the “Act”), a television station
15 would make a prohibited corporate in-kind contribution to the Casey Committee by
16 selling advertising time at the Lowest Unit Charge (“LUC”)¹ if Mr. Casey is not
17 “entitled” to the LUC under section 315 of the Communications Act of 1934, as
18 amended. *See* 47 U.S.C. 315(b).

19 The Commission concludes that providing the LUC to the Casey Committee is an
20 in-kind contribution, unless the LUC is provided to the Casey Committee as a discount
21 offered in the ordinary course of business. If provided as a discount in the ordinary
22 course of business, the LUC would not be an in-kind contribution to the Casey
23 Committee, regardless of whether Mr. Casey is “entitled” to the LUC under the
24 Communications Act.

25 ***Background***

26 The facts presented in this advisory opinion are based on your letter of September
27 19, 2006, as supplemented by your emails of September 20, 2006.

¹ The LUC is the lowest advertising rate that a station charges other advertisers for the same class and amount of time for the same period. *See* 47 U.S.C. 315(b)(1) and 47 CFR 73.1942(a)(1).

1 The Casey Committee is the authorized committee of Bob Casey, a candidate for
2 election to the United States Senate from the Commonwealth of Pennsylvania. Mr.
3 Casey's opponent in the general election is Senator Rick Santorum.

4 The Communications Act generally requires broadcasters to provide candidates
5 the LUC for a candidate's political advertisements in the 45 days preceding a primary
6 election and the 60 days preceding a general election. However, the Bipartisan
7 Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (March 27, 2002)
8 ("BCRA"), amended section 315 of the Communications Act of 1934, 47 U.S.C. 315(b),
9 to provide that a Federal candidate "shall not be entitled" to the LUC if any of the
10 candidate's advertisements makes a direct reference to the candidate's opponent and fails
11 to contain a statement both identifying the candidate and stating that the candidate has
12 approved the communication (the "Communications Act Statement"). In the case of
13 television advertisements, for a period of no less than four seconds at the end of the ad,
14 there must appear simultaneously "(i) a clearly identifiable photographic or similar image
15 of the candidate; and (ii) a clearly readable printed statement, identifying the candidate
16 and stating that the candidate has approved the broadcast and that the candidate's
17 authorized committee paid for the broadcast." BCRA sec. 305, 116 Stat. at 101.

18 KDKA Television, a corporation, has informed both Senator Santorum and the
19 Casey Committee that KDKA would make the LUC available for advertisements run by
20 either candidate, regardless of whether the advertisements contain the proper
21 Communications Act Statement required by the Bipartisan Campaign Reform Act.

22 On September 20, KDKA amended its Political Disclosure Statement, which sets
23 forth the station's policies regarding the sale of time to candidates for public office, to

1 provide as follows: “It is not presently clear whether a station may, as a matter of its own
2 discretion, continue to afford the lowest unit charge to a candidate who has caused the
3 broadcast of an ad that does not comply with the above disclaimer requirements [*i.e.*,
4 does not contain the proper Communications Act Statement]. Pending further guidance
5 from the Federal Election Commission or the Federal Communications Commission, the
6 Station will continue to afford the lowest unit rate to candidates in these circumstances.”
7 Several other incorporated television stations have similarly assured the Casey
8 Committee, albeit orally rather than in writing, that they would make the LUC available
9 to Mr. Casey, regardless of whether the Casey Committee’s advertisements include the
10 proper Communications Act Statement.

11 The Casey Committee would like to accept the offers it has received from KDKA
12 and other television stations to provide airtime at the LUC, regardless of whether the
13 Casey Committee’s advertisements include the proper Communications Act Statement.
14 Accordingly, the Casey Committee is developing several broadcast television
15 advertisements that would directly refer to Senator Santorum and that would be
16 accompanied by a variety of different statements. Among the options the Casey
17 Committee is working with are (1) an advertisement containing a written statement at the
18 end of the advertisement but without a simultaneous clearly identifiable image of Mr.
19 Casey, whose image would appear at the beginning of the advertisement in conjunction
20 with an aural statement, and (2) an advertisement containing all of the statements
21 required under Commission regulations, but all aired entirely at the beginning of the
22 advertisement. You assert that all of the options you are considering would satisfy the

1 requirements of the Federal Election Campaign Act, *see* 2 U.S.C. 441d(d)(1)(b),² but
2 none of them would contain the proper Communications Act Statement.

3 The Federal Communications Commission (“FCC”) has jurisdiction over the
4 Communications Act, but has not yet promulgated regulations implementing the BCRA
5 amendments to the Communications Act. Informal conversations between Commission
6 staff members and FCC staff members confirm, however, that the FCC staff interprets the
7 BCRA amendments to the Communications Act to allow a television station to offer the
8 LUC to a candidate whose advertisements do not contain the proper Communications Act
9 Statement, as long as the station treats all Federal candidates in a consistent, non-
10 discriminatory manner.³ You have informed us that FCC staff members have further
11 confirmed this interpretation in informal conversations with KDKA and other television
12 stations. The FCC has not made a formal determination as to whether any of the
13 advertisements run by the Santorum Committee or any of the advertisements that you
14 propose would or would not contain the proper Communications Act Statement.

² The Commission notes that, as described, the second category of advertisements that you contemplate would not be permissible under the Act and Commission regulations. 2 U.S.C. 441d(d)(1)(b) requires candidates sponsoring television advertisements to identify themselves and state that they approved the communication. The statement must be conveyed by either (1) an unobscured, full-screen view of the candidate, or (2) a voice-over by the candidate, accompanied by a clearly identifiable photographic or similar image of the candidate. The statement must also appear in writing *at the end of the communication* in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least four seconds. *See also* 11 CFR 110.11(c)(3).

³ The Commission notes that the FCC’s determination of whether providing the LUC to a candidate not entitled to it is proper under the FCC’s access and non-discriminatory rules is separate and distinct from the Commission’s determination of whether providing the LUC to a candidate not entitled to it is an in-kind contribution under the Federal Election Campaign Act.

1 ***Question Presented***

2 *Would the Casey Committee receive a prohibited in-kind contribution if an*
3 *incorporated television station charged Mr. Casey the LUC for advertising time when*
4 *Mr. Casey is not “entitled” to the LUC under the Communications Act?*⁴

5 ***Legal Analysis and Conclusions***

6 Yes, the Casey Committee would receive a prohibited in-kind contribution if an
7 incorporated television station charged Mr. Casey the LUC for advertising time, unless
8 the LUC is provided to the Casey Committee as a discount offered in the ordinary course
9 of business

10 First, the Commission must note that it does not have jurisdiction over the
11 Communications Act and whether or not a disclaimer meets its requirements. The
12 Commission has jurisdiction over both the issue of whether a disclaimer meets the
13 requirements of the Federal Election Campaign Act and whether a corporation has
14 provided an in-kind contribution by providing the LUC to a candidate not “entitled” to
15 receive it. Because the Commission does not have authority to determine whether a
16 disclaimer meets the requirements of the Communications Act, the Commission cannot
17 determine if any given ad is or is not “entitled” to the LUC. However, for the purposes of
18 this Advisory Opinion, the Commission assumes that the ads in question would not meet
19 the disclaimer requirements of the Communications Act and thus would not be
20 guaranteed or “entitled” to the LUC.

⁴ Because the Commission’s statutory jurisdiction does not extend to the Communications Act, the Commission does not determine whether the proposed advertisements would comply with section 315 of the Communications Act. Instead, for the purposes of this advisory opinion, the Commission assumes that the proposed advertisements are not entitled to the LUC, based on your assertion that “none [of the advertisements] will meet the additional requirements of 47 U.S.C. 315(b)(2)(C).”

1 Under the Act, a corporation makes a prohibited in-kind contribution to a political
2 committee when it offers that committee a discount outside of its ordinary course of
3 business. The Act prohibits corporations from making any contributions or expenditures
4 in connection with a Federal election. *See* 2 U.S.C. 441b(a). The Act and Commission
5 regulations define the terms “contribution” and “expenditure” to include any gift of
6 money or anything of value for the purpose of influencing a Federal election. *See* 2
7 U.S.C. 431(8)(A)(i) and 431(9)(A)(i); 11 CFR 100.52(a) and 100.111(a); *see also* 2
8 U.S.C. 441b(b)(2) and 11 CFR 114.1(a)(1) (providing a similar definition for
9 “contribution and expenditure” with respect to corporate activity). Commission
10 regulations further define “anything of value” to include all in-kind contributions and
11 state that, unless specifically exempted under 11 CFR 100.71(a), the provision of any
12 goods or services (including advertising services) without charge, or at a charge that is
13 less than the usual and normal charge for such goods or services, is a contribution. *See*
14 11 CFR 100.52(d)(1); *see also* 11 CFR 100.111(e)(1).

15 If a broadcaster provides the LUC to a federal candidate who is not legally
16 entitled to receive it, the broadcaster’s sale price would constitute a discount. The
17 Commission has held, however, that “the purchase of goods or services at a discount does
18 not result in a contribution when the discounted items are made available in the ordinary
19 course of business and on the same terms and conditions to the vendor's other customers
20 that are not political committees.” Advisory Opinion 2004-18 (Friends of Joe
21 Lieberman), *see also* 1996-2 (CompuServe), and 1989-14 (Anthony’s Pier 4 Restaurant).

22 Accordingly, the Commission concludes that the provision of the LUC to the
23 Casey Committee would result in a prohibited in-kind contribution, unless the LUC

would otherwise be provided to all similarly situated advertisers (e.g., customers purchasing a certain volume of advertising). If provided to all similarly situated advertisers, the LUC would not be an in-kind contribution to the Casey Committee, regardless of whether the Casey Committee's has complied with Section 315 of the Communications Act.⁵

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

Michael E. Toner
Chairman

Enclosures (AOs 2004-43, 2004-18, 1996-2, and 1989-14)

⁵ The situation presented here differs materially from that presented in Advisory Opinion 2004-43 (Missouri Broadcasters Association), in which the Commission concluded that a broadcaster's decision to offer a Federal candidate the LUC did not result in an in-kind contribution when there was no evidence of a violation of the disclaimer requirements. In the present situation, the Casey Committee has stipulated that its advertisements will, in fact, not contain the proper Communications Act Statement, and the Commission has no basis for second-guessing that stipulation.